INTEREST OF AMICUS

Appellant and Appellees have filed with the Clerk of this Court a written Stipulation consenting to the filing of this Brief. Amicus is a Yurok Indian who owns and runs a small grocery store overlooking the confluence of the Klamath and Trinity Rivers in Northern California. The store has been located for thirty years on a parcel of tribal land held in trust by the United States for the benefit of the tribe. Because of the remoteness of the area, the store serves as a primary source of grocery supplies for much of the Indian population living along the neighboring Klamath and Trinity Rivers in places such as Weitchpec and Pecwan. The store is a crucial source of credit frequently required by local residents as a result of chronic unemployment in the area. It also serves as a place of employment for a few and a telephone communications center for many.

Amicus has historically operated the store at a marginal profit level free of state and county taxation. In 1968, in reliance upon Public Law 280, the County of Humboldt attempted to levy a state personal property tax on amicus' store inventory. On August 30, 1970, the County filed a lawsuit to collect taxes, but on August 28, 1972, the Humboldt County Superior Court ordered the action dismissed in a decision appended hereto. (Appendix A) Because California is a P.L. 280 state, the decision in the case presently before this Court will inevitably affect Amicus and his customers.

ARGUMENT

This case is of crucial significance to Indian people residing within the jurisdictional boundaries of states mentioned in P.L. 280. If allowed to stand as written, the decision could presage the demise of tribal government in P.L. 280 states. P.L. 280 affects six states, Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin as well as Montana and Washington which claim some degree of jurisdiction under P.L. 280. 1970 Census reports indicate a total of 827,091 Native Americans (including non-Indian Alaskan Natives) residing within the entire country. The eight states listed above have a Native American population of 265,248, or almost one-third of the whole. U.S. Department of the Interior, Bureau of Indian Affairs, Statistics Division, Preliminary 1970 Census Counts of American Indians and Alaskan Natives (March, 1971) (Appendix C). Some of the 265,248 persons live on non-P.L. 280 reservations and some live outside Indian country but an undeniably large percentage of Native Americans remain affected.

Appellant's and other amicus briefs mirror the intricacy of the numerous legal issues involved. Amicus, in this Brief, will limit his discussion to one issue - whether the limitations contained within the language of P.L. 280 prevent the extension of state jurisdiction to Appellant's activities under the facts of this case. For reasons that are not clear to Amicus, the Court below presumed that the jurisdictional limitations contained in P.L. 280 were not applicable. At an early point in its decision, the

Court below stated:

> [T]he question is whether there is any limitation upon that jurisdiction other than those limitations set forth in Public Law No. 83-280. 488 P.2d at 284.

In this one sentence the Court below evidently dismissed from its consideration the exceptions enacted by Congress as a limitation upon state jurisdiction. Amicus believes the jurisdictional limitations contained within P.L. 280 require far greater consideration.

This Court has recently recognized the caution with which Congress has always proceeded in extending state jurisdiction over Indian country. Kennerly v. District Court, 400 U.S. 423, fn. 1 (1971). Clearly, that caution is evidenced in the limitations placed upon the state jurisdiction extended by P.L. 280. The statute states in part:

> Nothing in this section... shall authorize regulation of the use of [trust] property in a manner inconsistent with any Federal treaty, agreement or statute or with any regulation made pursuant thereto ...

This language must be interpreted in the interest of the Indian people. Squire v. Capoeman, 351 U.S. 1, 6-7 (1956), Pacific Fisheries Co. v. United States, 248 U.S. 78, 89 (1918), Choate v. Trapp, 224 U.S. 665, 675 (1912)[1], United States v. Celes-

1. In Choate the Court stated:

tine, 215 U.S. 278, 290 (1909), Red Bird v. United States, 203 U.S. 76, 94 (1906).

In the statutory language quoted above, Congress assured the Indian people affected that the federal guardianship of the use of trust land would be continued by providing that whenever federal law (whether through treaty, agreement, statue or regulation) regulated usage of trust property, inconsistent state regulations would not apply. See, Metlakatla Indian Community v. Egan, 369 U.S. 45, 56-57 (1962). It is accordingly essential for this Court to determine whether the jurisdictional limitation is applicable to the subject matter before it. Appellant clearly operates his business on trust property. To fall within the limitation therefore, Appellant need only be regulated by federal law with which the state excise laws are inconsistent. Both aspects of this question have been thoroughly discussed and authoritatively decided in Warren Trading Post v. Arizona State Commn., 380 U.S. 685 (1965).

Under Warren Trading Post, Title 25 U.S. Code §§261-62 and regulations pursuant thereto exclusively control the area of trade upon Indian Reservations. Consequently state taxation disturbs the statutory plan Congress set up. . . to protect Indians. . . ." Id at 691. The reasons for federal control and the corresponding difficulties created by state taxation are well described by the Hum-

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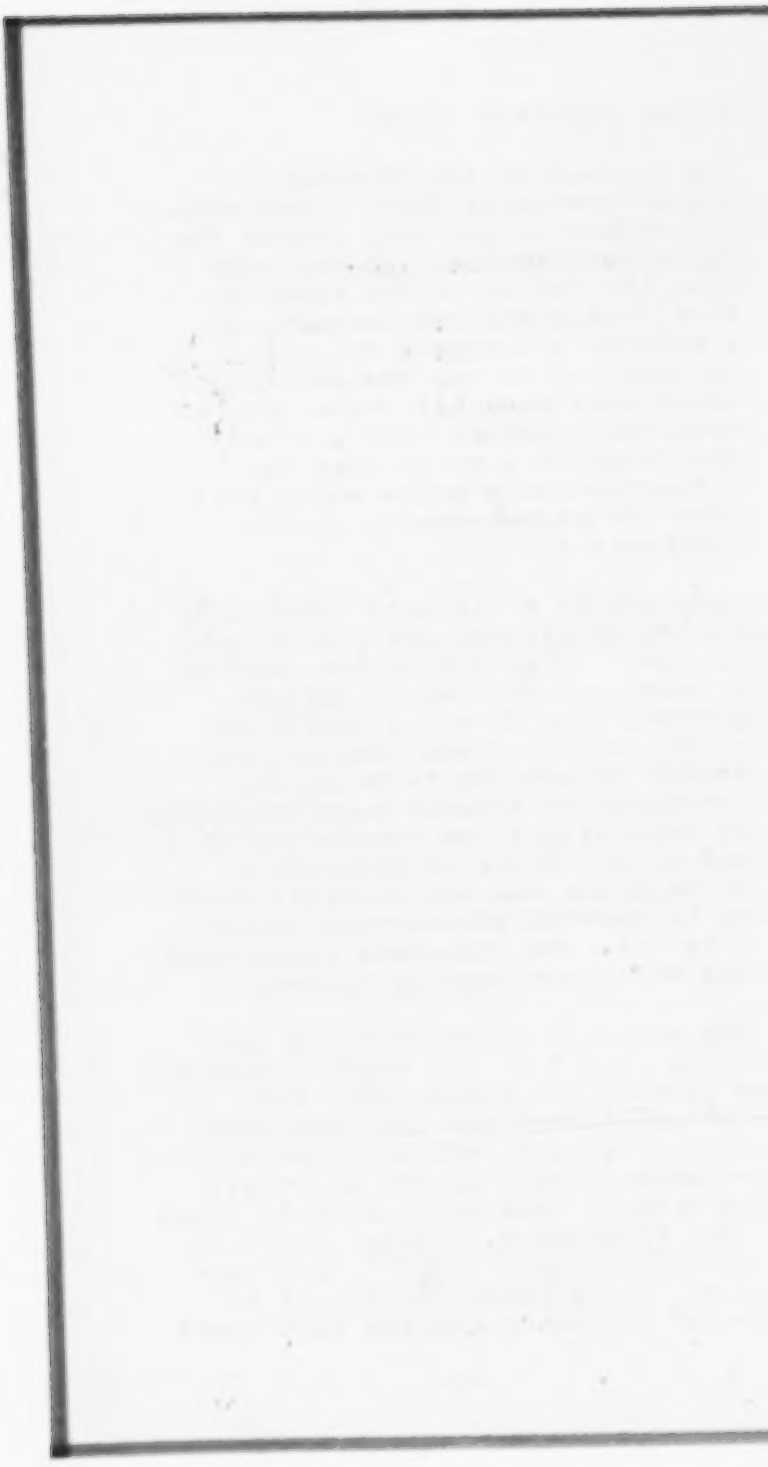
fn.1 continued
This rule of construction has been recognized without exception, for more than a hundred years, and has been applied in tax cases.

boldt County Superior Court:

> The Indians on the reservation are economically poor. They cannot afford to pay high prices for their merchandise. At the same time, an Indian on the reservation, using his own property to establish a business to sell merchandise to the Indian inhabitants must keep his costs down so that his customers can purchase his items at a price they can afford and at a price which will give the store owner a profit. (Appendix A)

State taxation of a business inevitably and unavoidably affects the prices that business must charge and/or the profits it will make. As decided in Warren Trading Post, this directly conflicts with federal statutes and regulations. Consequently in seeking to apply its excise statutes to transactions occurring on trust land within the boundaries of a Reservation, the State of Washington seeks to regulate the use of trust land contrary to federal statute and regulations. In P.L. 280, Congress guaranteed that this would not legally happen.

The decision below is based upon the premise that P.L. 280 repeals federal trading laws in the states affected. A number of considerations preclude this. The limiting language quoted above evinces a clear Congressional intent to retain existing federal laws applicable to trust land. See Kirkwood v. Arenas, 243 F.2d 863, 865-66 (9th Cir. 1957). Upon consideration, it is rather difficult to conceive of any other meaning that might

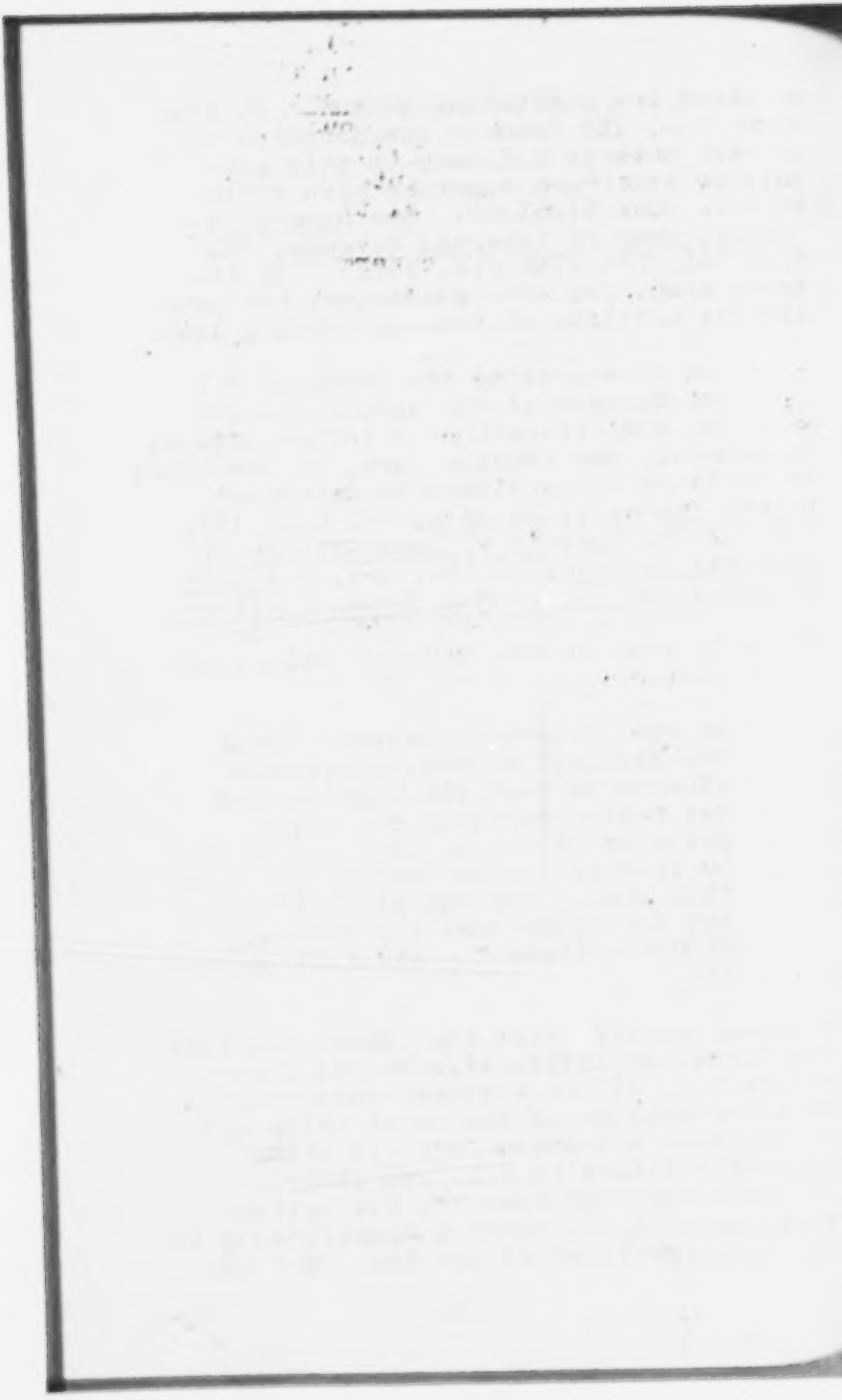


be given the limitation quoted. By its terms P.L. 280 invokes the doctrine of in pari materia and can, in this case, only be construed together with Title 25 U.S. Code §§261-62. See Stevens v. Commissioner of Internal Revenue, 452 F.2d 741, 744 (9th Cir. 1971). By its terms also, P.L. 280 guarantees the continuing vitality of federal trading laws.

In interpreting the terms of P.L. 280, the opinion of the agency charged with the administration of Indian affairs, in general, and trading laws, in specific, is entitled to considerable deference. United States v. Jackson, 280 U.S. 183, 193 (1930), Stevens v. Commissioner of Internal Revenue, at 746, see, Red Lion Broadcasting Co. v. Fed. Communications Comm., 395 U.S. 367, 381 (1969). In footnote four of the decision below, the Court stated:

> We are advised by counsel for the Washington State Department of Revenue that the Commissioner has never exercised the power given by 25 U.S.C. §261 (1876) to license Indian Traders in this state, and the plaintiff has not questioned the accuracy of his statement. 488 P.2d at 287.

A reader is left with the impression that the Bureau of Indian Affairs has interpreted P.L. 280 in a manner consistent with the opinion of the Court below and accordingly withdrawn from its trade responsibilities in P.L. 280 states. If the Bureau had done so, its action would necessarily carry a significance in the interpretation of the law. But the

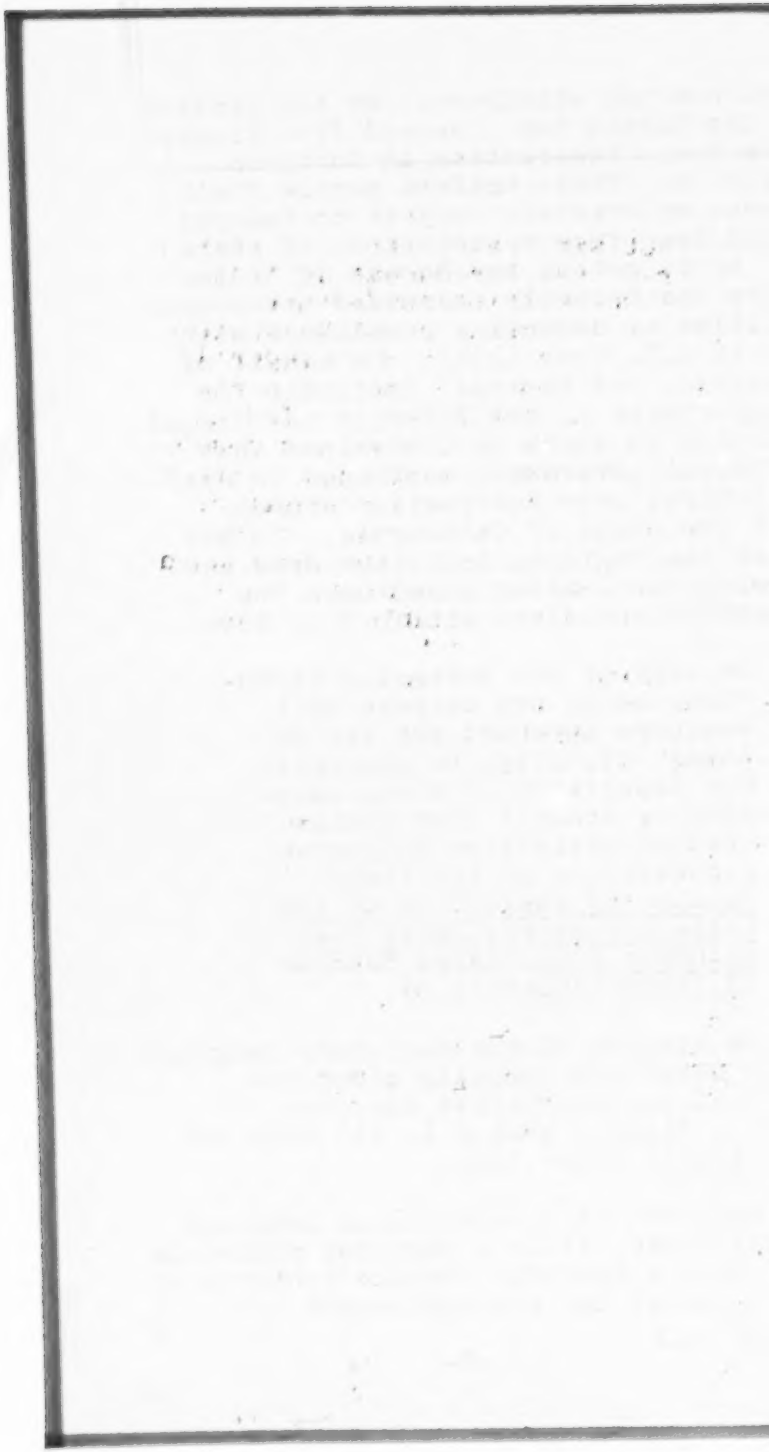


Bureau has not withdrawn. At the present time the Bureau has licensed five traders on the Hoopa Reservation in Northern California. These traders pursue their business enterprises subject to federal law and free from restrictions of state law. As to amicus the Bureau of Indian Affairs has recently exercised its responsibilities by demanding compliance with Title 18 U.S. Code §1161. On behalf of the Bureau, the Regional Solicitor for the Department of the Interior has issued an opinion in which he determined that the federal government continues to exercise control over Reservation stores within the State of California. In his opinion the Regional Solicitor drew the following conclusions based upon the limitations contained within P.L. 280:

> In view of the foregoing exception, we do not believe that Congress intended the Act of August 15, 1953, to authorize the imposition of state taxation or control over Indian trading activities on Indian reservations in the state. Opinion of the Office of the Solicitor in re: Santa Rosa Mother's Club, dated October 22, 1968 (Appendix B).

Both the clarity of the statutory language and the deference normally given the opinion of administrative agencies require a finding that P.L. 280 does not repeal Indian trade laws.

But even if Congressional language were not clear, it is a familiar principle of law that a specific statute controls over a general one without regard to



priority of enactment. Bulova Watch Co. v. United States, 365 U.S. 753, 758 (1961), Townsend v. Little, 109 U.S. 504, 512 (1883). Title 25 §§261-62 exclusively control the area of trade with Indians upon Indian Reservations; P.L. 280 nowhere specifically indicates an intention to alter that federal control. Accordingly federal control over trade is not altered.

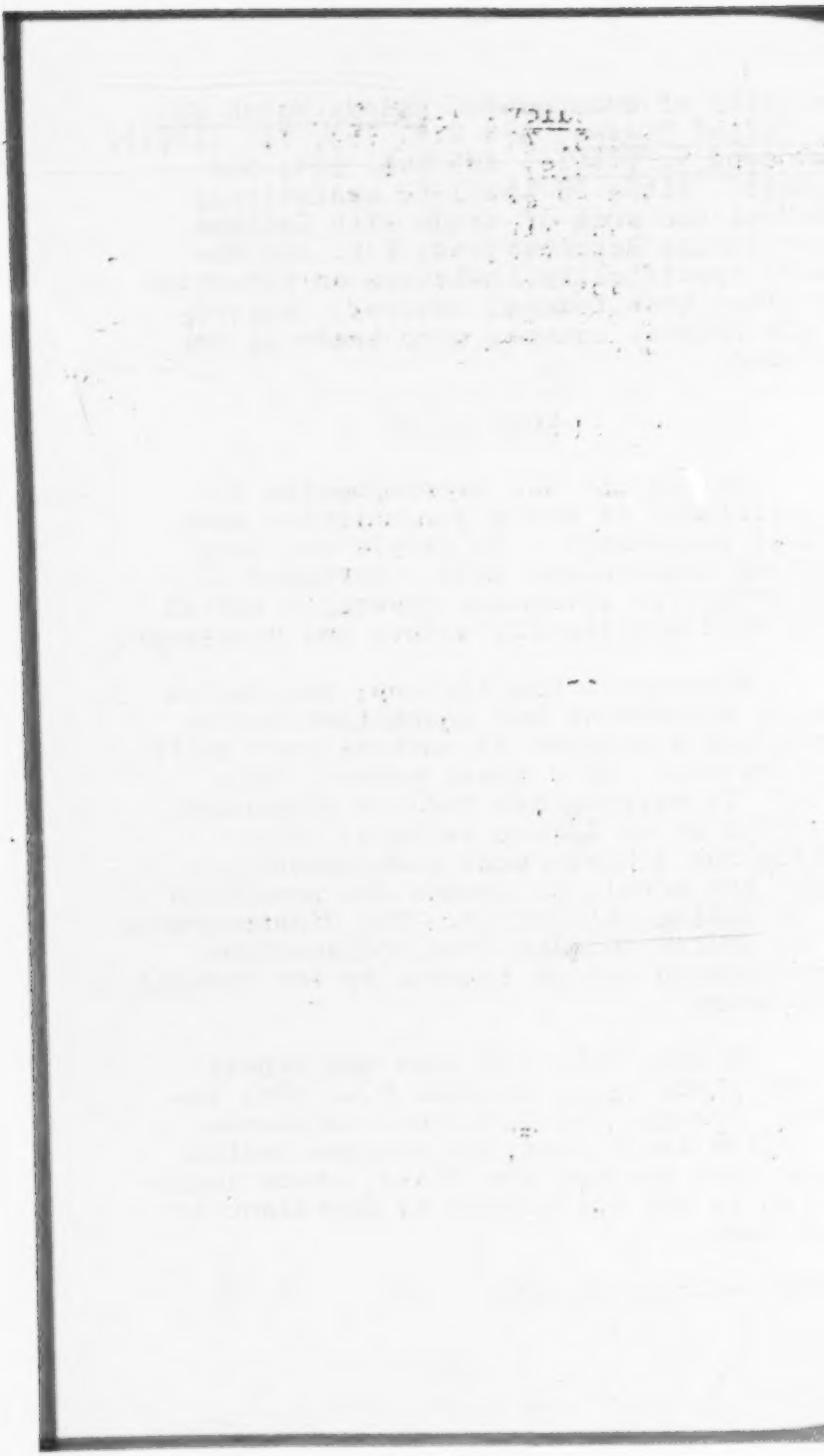
CONCLUSION

Amicus can not overemphasize the significance of state jurisdiction upon tribal government. No people can long perform meaningless acts. Stripped of any effective governing powers, a tribal body will necessarily wither and disappear.

Throughout its history, the United States Government has guaranteed Native Americans a measure of control over their own destiny. To a great extent, this power is responsible for the continued vitality of an Indian culture. This nation has a historical committment, legal and moral, to permit the retention of an Indian life style. The disappearance of an Indian culture from the American scene should not be imposed by the federal government.

Because P.L. 280 does not repeal Indian trade laws, because P.L. 280, instead, insures the continued existence of Indian trade laws and because Indian trade laws preempt the field, state legislation is not applicable to Appellant in this case.

DATED: October 2, 1972



Respectfully Submitted,

BRUCE R. GREENE
WILLIAM H. COZAD
LAWRENCE O. EITZEN
CALIFORNIA INDIAN LEGAL SERVICES
P.O. Box 1228 (931 Third Street)
Eureka, California 95501

Counsel for Amicus Curiae
Eric W. Pearson, Jr.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

COUNTY OF HUMBOLDT, a political subdivision of the State of California,

Plaintiff,

vs.

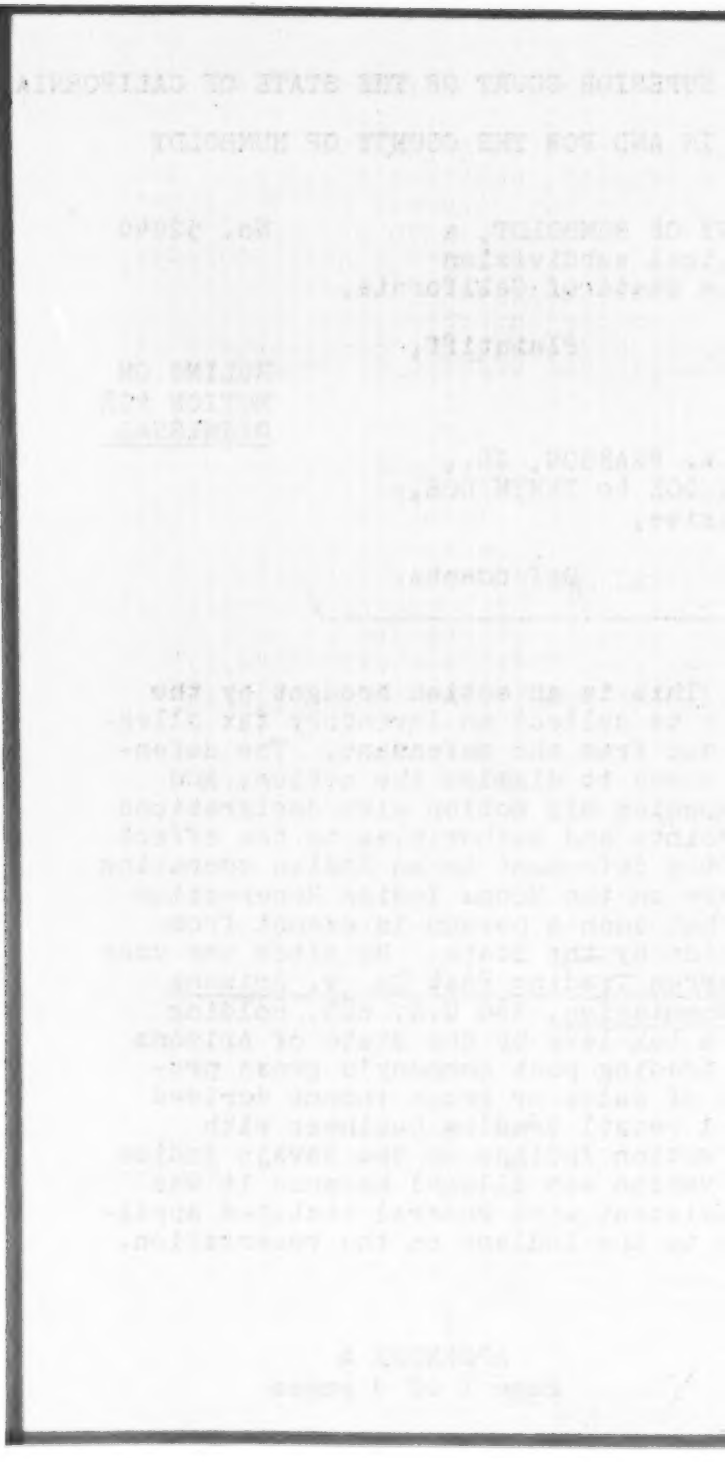
ERIC W. PEARSON, JR., FIRST DOE to TENTH DOE, inclusive,

Defendants.

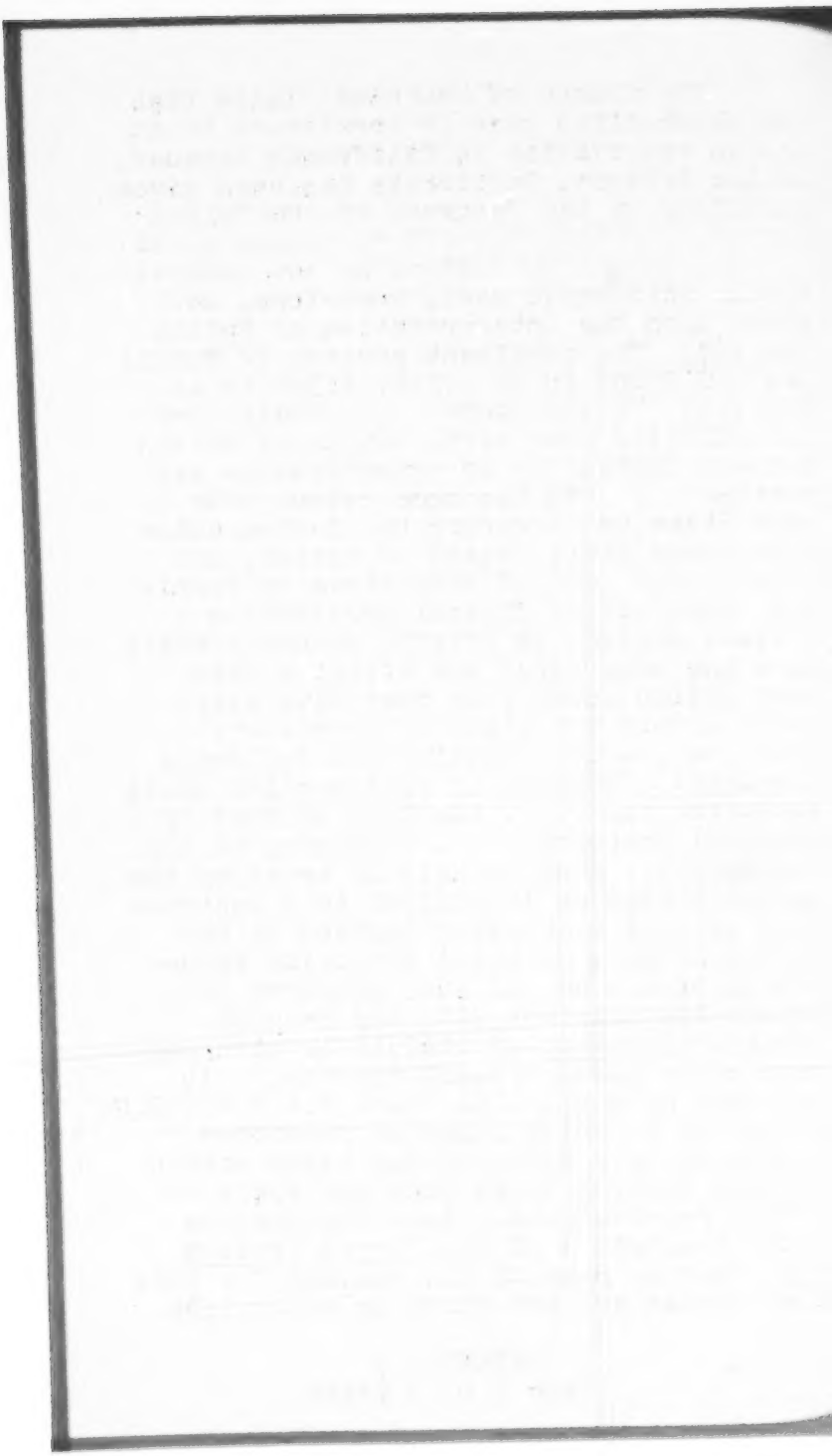
No. 52040

RULING ON MOTION FOR DISMISSAL

This is an action brought by the County to collect an inventory tax allegedly due from the defendant. The defendant moves to dismiss the action, and accompanies his motion with declarations and Points and Authorities to the effect that the defendant is an Indian operating a store on the Hoopa Indian Reservation and that such a person is exempt from taxation by the State. He cites the case of Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685, holding that a tax levy by the State of Arizona on a trading post company's gross proceeds of sales or gross income derived from a retail trading business with reservation Indians on the Navajo Indian Reservation was illegal because it was inconsistent with Federal statutes applicable to the Indians on the reservation.

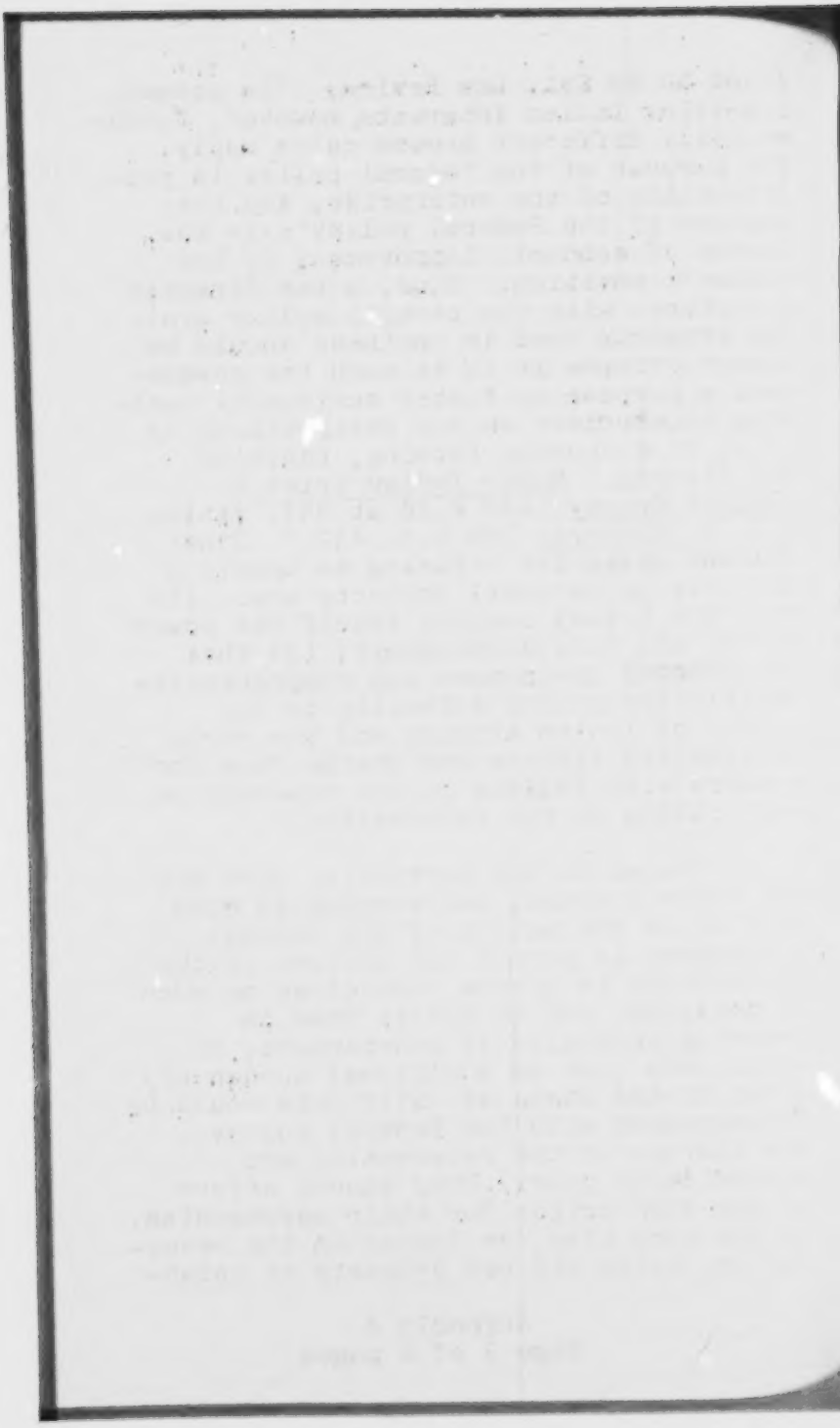


The County of Humboldt claims that the above-cited case is irrelevant to an Indian reservation in California because, unlike Arizona, California has been given authority by the Congress of the United States [illegible] Public Law 280 to impose a tax of this nature on Indians on the reservation. This whole case, therefore, depends upon the interpretation of Public Law 280. The pertinent portion of Public Law 280 found in 28 U.S.C. §1360 is as follows: "[t]he State . . . shall have jurisdiction over civil causes of action between Indians or to which Indians are parties . . . to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:" Then the statute contains the following language: "Nothing in this section shall authorize the ... . taxation of real or personal property . . . belonging to any Indian . . . that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement or statute or with any regulation made pursuant thereto." It has been held that the "Buck Act," 4 U.S.C. §§105-110 in which Congress permitted states to levy sales or use taxes within certain Federal areas does not apply to Indian reservations. (See discussions under Headnote 4 of the Warren Trading Post case.) Some of the reasons for this distinction are set forth in an article



found in 59 Cal. Law Review: "In cases involving Indian interests, however, fundamentally different ground rules apply. The purpose of the Federal policy is profitability of the enterprise, and the measure of the Federal policy's is the degree of economic improvement in the Indian's position. Thus, a tax directly interferes with the central policy goal. . . the property used in business should be exempt because it is as much the government's purpose to foster successful business enterprises on the reservations as it is to encourage farming, ranching and fishing. Makah Indian Tribe v. Clallam County, 440 P.2d at 447, citing U.S. v. Rickert, 188 U.S. 432." Other reasons given for refusing to uphold a tax levy on personal property are: (1) that the tribal council itself has power to tax and levy assessments; (2) that the Federal government has comprehensive legislation giving authority to the Bureau of Indian Affairs and the right to regulate license and charge fees for traders with Indians on the reservation and trading on the reservation.

Coming to the particular case and the Hoopa Indians, and keeping in mind that it is the policy of the Federal government to permit the Indians on the reservation to govern themselves as much as possible, and to assist them in becoming economically independent, it would seem that an additional burden of a tax by the State of California would be inconsistent with the Federal policy. The Indians on the reservation are economically poor. They cannot afford to pay high prices for their merchandise. At the same time, an Indian on the reservation, using his own property to estab-



lish a business to sell merchandize to the Indian inhabitants must keep his costs down so that his customers can purchase his items at a price they can afford and at a price which will give the store owner a profit. The State cannot impose a sales tax on goods sold on the reservation to inhabitants of the reservation because this is said to interfere with fundamental Federal policy. There seems, therefore, to be no reason why a county can impose an inventory tax upon that same business.

IT WILL BE THE ORDER OF THIS COURT that this action be dismissed.

DATED: August 21, 1972

D. H. Wilkinson
Judge of the Superior Court

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
Sacramento Region
2800 Cottage Way
Room E-2753
Sacramento, California 95825

October 22, 1968

Mr. Kenneth J. McManigal
Tax Counsel
State of California Board of Equalization
P.O. Box 1799
Sacramento, California 95808

Re: Santa Rosa Mothers' Club

Dear Mr. McManigal:

Reference is made to your inquiry of September 19, 1968, and our previous telephone conversations on the foregoing subject.

We understand that a group of Indian women plan to conduct barbecues and sell meals to Indians and non-Indians, apparently for charitable purposes, within the territorial limits of an Indian reservation. In this connection you have inquired as to the possible application of federal trading laws to the activities of this group while operating within a reservation.

Article 1, sec. 8, cl. 3, of the United States Constitution provides that, "Congress shall have power . . . to regulate commerce . . . with the Indian tribes." From our earliest dealings with the

Indians, Congress has exercised a dominant control over persons who wished to trade with Indians and Indian tribes. Under the Act of August 15, 1876, as amended (19 Stat. 176; 25 U.S.C. §§261-262), the sole power and authority in the appointment of traders to Indian tribes is vested in the Commissioner of Indian Affairs (Federal Indian Law, 1958, pp.373-381). The Commissioner has, in turn, promulgated comprehensive regulations to implement the licensing of traders under federal law, which are to be found in 25 CFR 251-252. These laws provide no specific exemption for Indians or Indian groups.

It has been held by the Solicitor for the Department of the Interior that because Congress has given exclusive authority to the Commissioner of Indian Affairs to regulate trade with the Indians on Indian reservations and the prices at which goods should be sold to the Indians, the field is closed to state action. (Solicitor's Opinion, 58 I.D. 562 (1943); see also 57 I.D. 124.)

In Warren Trading Post v. Arizona Tax Commission, et al., 380 U.S. 685 (1965), the State of Arizona attempted to levy a sales tax of 2% of the gross proceeds of sales or gross income of Warren Trading Post Company, a retail trading business operating on a portion of the Navajo Indian Reservation within Arizona. The business was operated by non-Indians and its consumers were both Indians and non-Indians. In that case, the Supreme Court of the United States took note of the federal laws relating to trading with Indians and stated as follows:

> "... These apparently all-inclusive regulations and the statutes authorizing them would seem in themselves sufficient to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders. ..."

The court also had occasion to review the prior opinions of the Solicitor's Office as cited above, and stated its concurrence with the correctness of those rulings. The court felt that the assessment and collection of the tax would to a substantial extent frustrate the evident Congressional purpose of ensuring that no burden be imposed upon Indian trading except as authorized by Congress.

Similarly, in striking down the imposition of a county ad valorem tax on personal property owned in part by an Indian on an Indian reservation in the State of Washington, the Supreme Court of that state ruled that imposition of such a tax would be inconsistent with existent federal policy, in that Congress had neither specifically nor impliedly provided for the taxation of Indian personalty by the state or its subdivisions. The court cited United States v. Rickert, 188 U.S. 432 (1903), and the Warren case, supra. See Makah Indian Tribe v. Clallam County, 440 P.2d 442 (1968).

We must, of course, recognize that certain state laws have been permitted to apply to activities on Indian reser-

vations, where such laws are specifically authorized by Congress and where they clearly do not interfere with federal policies concerning the reservations (see Organized Village of Kake v. Egan, 369 U.S. 60 (1961). The Act of August 15, 1953 (67 Stat. 588) extended, with certain exceptions, state civil and criminal jurisdiction in the areas of Indian country situated in California and other enumerated states. However, one of the stated exceptions to extension of state jurisdiction specifically forbids that law from "... authorizing the alienation, encumbrance, or taxation of any real or personal property belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to restriction against alienation imposed by the United States: ..." or authorizing "...regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute, or with any regulation made pursuant thereto. ..."

In view of the foregoing exception, we do not believe that Congress intended the Act of August 15, 1953 to authorize the imposition of state taxation or control over Indian trading activities on Indian reservations in the state.

To sanction state taxation and controls over the operation of an Indian group on an Indian reservation could place an undue burden on reservation Indians and could in turn disturb and disarrange the statutory plan Congress set up for the very protection of its Indian wards.

Inasmuch as Indians are not specifically exempted from the application of

ederal laws and regulations with respect
o trading activities on Indian reser-
ations, it is our opinion that the
rading operations of an Indian group
hich operates within the confines of
n Indian reservation fall under the
xclusive jurisdiction of the Commissioner
f Indian Affairs.

Sincerely yours,

Charles R. Renda
Regional Solicitor
Sacramento Region

Barry K. Berkson
For the Regional Solicitor

c:
ssociate Solicitor, Indian Affairs
rea Director, Bureau of Indian Affairs
irector, Palm Springs Office, BIA
rea Field Representative, BIA, Riverside

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